THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 4280 of 2007

DATE: 19-07-2007

Between :

M/s Suryalakshmi Cotton Mills Ltd.,
Amangallu village and Mandal,
Mahobobnagar District.

… Petitioner

And

Regional Director,
Employees State Insurance Corporation,
Hyderabad and 3 others.

… Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 4280 of 2007

ORDER:

This writ petition is filed seeking a declaration that the action of the first respondent-Regional Director, Employees State Insurance Corporation in proposing to implement the ESI scheme in the Revenue village of Amangallu is arbitrary and illegal.

The material on record shows that the first respondent by letter dated 29-01-2007 informed the petitioner industry that the provisions of the Employees State Insurance Act, 1948 (for short 'the Act') would be implemented in all the areas falling within the limits of Revenue villages of Amangallu with effect from
01-02-2007 and accordingly, called upon the petitioner to initiate action for registration of its unit as well as all the coverable employees in compliance with the provisions of the Act. While stating that on submission of prescribed form in the Regional Office, the petitioner will be allotted an Employee's Code Number and thereafter the employees and their family members will be provided with medical benefits and medical care through the Medical Practitioner specified thereunder, the petitioner, being the principal employer, was called upon to remit the contributions in respect of all its employees and also in respect of the employees engaged through immediate employer within 21 days of expiry of the wage period. The petitioner was also required to submit a return of contributions with effect from 01-02-2007.

This writ petition is filed contending inter alia that the extension of ESI coverage with effect from 01-02-2007, without providing the required medical facilities, is arbitrary and illegal. It is also contended that the medical facilities proposed to be provided under the scheme

will not be adequate to cater the needs of about 2000 employees of the petitioner industry and will not serve any purpose._

A counter affidavit has been filed on behalf of the Corporation denying the allegation that no proper medical facilities are provided. It is also stated that the first respondent has got surveyed the factories/establishments situated in Amangallu area through one of the area Inspectors and identified sufficient number of employees found working in the area for implementation of the ESI scheme and accordingly the impugned letter was issued.

A separate counter affidavit has been filed on behalf of the third respondent on the same lines denying the allegation that the ESI scheme has been implemented without arranging medical facilities.

I have heard the learned counsel for both the parties and perused the material on record.

The law is well settled that when the employer denies the liability or applicability of the provisions of the Act or the quantum of the contribution to be deposited by the employer, it is for him to approach the Insurance Court for appropriate declaration (Vide ***Employee's State Insurance Corporation v. F.Fibre Banglore(Private) Limited, 1997 SCC (L&S) 190***)

Following the above decision of the Supreme Court, a Division Bench of this Court in ***Ashok Leyland Ltd, Ductron, Castings Ltd., v. Dy.Tahsildar/Special. Revenue Inspector(ESI)***[1] held that all questions including the question of applicability of the Act can be raised before the Employees Insurance Court.

That apart all the grounds raised by the petitioner opposing the impugned proposal for implementation of ESI scheme in the petitioner's establishment involved several disputed questions of fact which cannot be enquired into and decided by this Court in a writ proceeding.

Hence, the petitioner ought to have availed the remedy available under the Act for redressal of its grievance and this writ petition is not maintainable.

Accordingly, without expressing any opinion on merits, the writ petition is disposed of granting leave and liberty to the petitioner to work out the statutory remedy. No costs.

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G. ROHINI, J

Date: 19-07-2007
KLP

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[1] 2001(4)ALD 96 (DB)